IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1080 OF 2005

Mr. Freddy Sunderdas Thomas .. Petitioner
V/s.
The State of Maharashtra and others .. Respondents

Mr. H.S. Anand for the Petitioner
Mr. D.P. Adsule, APP. for the State
Ms. Leena Sapra i/b. M/s. Patil Sapra & Co. for the Respondent No. 2.
Mr. Ramesh Ramamurthy for the Respondent Nos. 3 and 4

CORAM : V.M. KANADE, J.
DATED : 29TH APRIL, 2005

P.C.:-

1. Heard the learned counsel for the Petitioner and the learned counsel for the Respondents. The Petitioner is the original accused no. 1. The Respondent No. 2 M/s. Ashok Leyland Finance Company, which had given finance to the Petitioner for the purpose of purchasing two trucks. The Petitioner had paid 5 monthly instalments and thereafter he had committed certain defaults in paying the sum of the instalments. An Arbitrator was appointed as per the provisions of clause 5 of the said agreement. Before the Arbitrator was appointed, the Company had filed a complaint with the Court of Additional Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai, bearing No. 224/Misc of 2004. On the complaint, prayer was made that an order may be passed under section 156(3) of the Code of Criminal Procedure.

2. In the meantime, after the Arbitrator was appointed, the dispute between the parties was settled. The

amount, which was due and payable to the Respondent No. 2, was paid by the Respondent No. 4 and the truck was purchased by the Respondent No. 4 and the Petitioner has given his no objection for the transfer of ownership of the said trucks. Thereafter an application was made before the Additional Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai by the complainant, seeking permission to withdraw the complaint, since the matter was settled between the parties. The learned Magistrate, however, dismissed the application filed by the Company. He thereafter, proceeded to pass an order under section 156(3) of the Code of Criminal Procedure on 9.12.2004 and Cuffe Parade Police Station registered a complaint No. MECR/1/2005 against the Petitioner. The Petitioner Nos. 1 and 2 were arrested and were produced before the Court and were remanded the Police custody upto 15.3.2005 and thereafter, they were transferred to judicial custody. On 17.3.2005, the complainant Company gave letter for withdrawal of the complaint and stated that the amount of Rs. 15,02,000/- has been paid to the Company. Thereafter, the Petitioners were released on bail. Under these circumstances, the present Petition has been filed for the quashing of the said complaint.

3. The learned counsel for the Respondent No. 2 has no objection if the complaint is quashed. The learned counsel for the Respondent No. 4 also has no objection if the complaint is quashed. It is, further submitted by the learned counsel for the parties that the bond,

which was executed by their clients may also be cancelled.

4. In my view, the learned Magistrate clearly erred in passing an order under section 156(3) of the Code of Criminal Procedure, when the complainant had already preferred an application for withdrawal of the complaint and has stated in specific terms that the matter is settled between the parties. Though, the Magistrate does not have the power to compound an offence, which is otherwise non-compoundable under the provisions of section 320 of the Code of Criminal Procedure, yet there was no necessity to pass an order directing the investigation under section 156(3) of the Code of Criminal Procedure.

5. Considering the peculiar facts and circumstances of the case, in my view, the complaint is liable to be quashed. Complaint and FIR. which is registered pursuant to order passed by the Magistrate under Section 156(3) is also liable to be quashed and set aside.

6. The Supreme Court in the case of **B.S. Joshi and Ors. v. State of Haryana and Anr. 2003 Cri. L.J. 2028,** in paragraph 15 has observed as under:-

> "15. In view of the above discussion, we hold that the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or complaint

and section 320 of the Code does not limit or affect the powers under section 482 of the Code."

7. Thus, though a Magistrate may not have the power to compound the offence under section 320 of the Code of Criminal Procedure in a non-compoundable case, yet the powers of this Court are not curtailed by virtue of the provisions of section 320, whereby this Court can exercise the inherent powers vested in this Court under section 482 of the Code of Criminal Procedure.

8. In the result, the Writ Petition is allowed. Criminal complaint filed by the Respondent No. 2 in the Court of the Metropolitan Magistrate being MECR/1/2005 dated 7.2.2005 registered by Cuffe Parade Police Station against the Petitioner accused and other accused for the offences under section 379, 409 and 420 of the Indian Penal Code is quashed and set aside. The bond executed by the complainant Respondent No. 2 and the Respondent No. 4 to stand cancelled. The bonds executed by the Petitioners in the sum of Rs. 25,000/- each also to stand cancelled. Sureties are discharged. All other bonds executed by the parties to stand cancelled. The Writ Petition is allowed in the above terms.

(V.M. KANADE, J.)